

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MICHAEL WEST,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil Action No.: 13-5339 (CCC)

ORDER

CECCHI, District Judge.

This matter comes before the Court on Petitioner Michael West's ("Petitioner") motion for default judgment [ECF. No. 11]. It appearing that:


1. Petitioner filed *apro se* pleading under 28 U.S.C. § 2255 challenging his federal incarceration arising from a judgment in the United States District Court for the District of New Jersey. Pursuant to the decision of the Court of Appeals for the Third Circuit in United States v. Miller, 197 F. 3d 644 (3d Cir. 1999), Petitioner was advised that under federal law, a person seeking relief in federal court from confinement resulting from conviction in that court must include in a single petition, under § 2255, all potential claims for which he or she desires to seek review and relief, because a second or successive habeas petition under § 2255 must be dismissed unless certain very specific and rare circumstances exist. See 28 U.S.C. § 2244.
2. Petitioner did not respond to the notice provided pursuant to Miller, however he filed an Amended Petition on July 18, 2014.

3. On August 28, 2014, Petitioner filed a request for Default against Respondent, even though the Court had yet to direct Respondent to provide their answer.
4. Petitioner then filed, with the Third Circuit Court of Appeals, a writ of mandamus [Dkt. No. 14-4342], seeking an order by this Court entering default judgment in the instant matter.
5. The Court issued an Order on November 13, 2014 that: (1) directed Respondent to file an answer, within 45 days of the Order, which responds to the allegations of Petitioner's motion by each paragraph and subparagraph, (2) required Respondent to include with its answer certified copies of all indictments and/or charges, transcripts, trial briefs, appendices, opinions, and any and all related documents in the proceedings, (3) allowed Petitioner to file his traverse to said answer within thirty days from the date of being served with same, and (4) dismissed Petitioner's motion to compel the government to file their opposition [ECF No. 3] and motion to amend his claims [ECF No. 4] as moot.
6. The following day, on November 14, 2014, Petitioner filed another motion for default judgment. This motion is nearly identical to Petitioner's August 28, 2014 request for default; both requests sought default due to Respondent's failure to respond. Petitioner's renewed motion for default says nothing about the Court's November 13, 2014 Order allowing Respondent 45 days to provide an answer. Respondent has ample time remaining to comply with the Court's previous Order.

Accordingly, **IT IS** on this 9 th day of December, 2014

ORDERED that Petitioner's motion for default judgment [ECF No. 11] is hereby dismissed as moot in accordance with the Court's November 13, 2014 Order.

SO ORDERED.



HON. CLAIRE C. CECCHI
United States District Judge